U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: EAC 03 073 52386 Office: VERMONT SERVICE CENTER Date: AUG 12 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a doctoral student at the Pennsylvania State University (Penn State). He had accepted, but not yet begun, a postdoctoral fellowship at the University of Missouri-Columbia (UMC). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner, in an introductory letter, states: "I am one of the small percentage of scientists who has risen to the top of my field: root biology and root genomics. More specifically, I am an expert in plant root architecture, physiology, and genomics conferring phosphorus efficiency in maize." The petitioner contends: "My research on root biology and root genomics will bring a new era in plant breeding program[s] and environmental quality improvement in USA."

The petitioner's initial submission includes copies of manuscripts and published articles by the petitioner and other documents relating to his professional credentials. The petitioner also submits several witness letters. The initial witnesses have all taught, collaborated, or offered employment to the petitioner. Professor Robert E. Sharp, chair of the Department of Agronomy at UMC, states that the petitioner "is exceptionally and unusually well qualified" in the study of root biology. Prof. Sharp asserts that the petitioner's doctoral work made "a substantial contribution to understanding plant responses to phosphorus deficiency."

[redacted] executive dean at the College of Life Science at Zhejiang University, states: "I have seen [the petitioner's] research career advance expeditiously and observed his maturation as an exceptional expert in his field of endeavor." [redacted]n State praises the petitioner's "outstanding academic record" and states that the petitioner's "dissertation research on the genetics and physiology of root architecture in maize is original and elegant in design and implementation. [redacted] an associate professor at the University of Wisconsin-Madison who collaborated with the petitioner, states that the petitioner's work "will result in several publications with important new results on plant root biology and root genomics. [The petitioner's] work is novel in identifying root traits . . . which confer phosphorus efficiency in maize."

The witnesses express confidence in the petitioner's abilities, and attest that he has received excellent training, but their statements do not support the petitioner's assertion that his work "will bring a new era" in his field.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work, but finding that the petitioner had not satisfied the remaining two prongs of the national interest test set forth in *Matter of New York State Dept. of Transportation*. The director concluded that the petitioner has not shown that his work is national in scope. We have held, however, that scientific research at major institutions is inherently national

in scope, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

The director referred to "the single letter of support and recommendation that [the petitioner] provided." On appeal, the petitioner correctly observes that he had submitted six such letters. The cover letter included with the initial filing also specified this amount. The director's description of the one letter, however, largely applies to the other letters as well. The letters do not alter the director's finding that the petitioner's reputation appears to be limited to "the circle of his professional acquaintances." Therefore, we find that this error by the director did not prejudice the outcome of the decision.

The director noted that the petitioner has written several published articles, but "the record contains no evidence that they have been widely cited by others conducting research in the [petitioner's] field." On appeal, the petitioner states: "Citation times evidence for co-authored papers were provided [sic]." The petitioner seems, here, to be claiming that citation evidence was included in the initial submission, but the petitioner does not specify the nature of this evidence. A list of documents, included in the initial submission, does not identify any citation record.

On appeal, the petitioner shows that five of his articles have been cited between two and four times each, for a total of 12 citations. The record does not identify the citing articles, and therefore we cannot determine how many (if any) of the citations are self-citations by the petitioner or his co-authors. When he filed the petition, the petitioner indicated that he had written 21 articles, which would give him an overall average citation rate of .57 citations per article. The petitioner has not shown that this citation rate is so infrequently encountered that it is inherently indicative of unusual influence and impact on the field.

At the time he filed the petition, the petitioner was completing his doctoral studies. While his instructors and collaborators clearly see worth in the work he has produced thus far, the petitioner has not met his burden to establish that he is not only a competent and fully trained scientist, but that he also qualifies for the special benefit of a waiver of the job offer requirement – a requirement that, by law, normally applies to professionals in the petitioner's field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.